

AMENDED IN ASSEMBLY APRIL 30, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2106**

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**Introduced by Assembly Member Wagner**

February 23, 2012

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An act to amend Section 663a of the Code of Civil Procedure, relating to civil procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 2106, as amended, Wagner. Civil procedure: motion to set aside and vacate a judgment.

Existing law establishes procedures by which a party to a court action may make a motion to set aside ~~or~~ *and* vacate a judgment. Under existing law, a party intending to make such a motion is required to file with the clerk and serve upon the adverse party a notice of his or her intention, designating the grounds upon which the motion will be made and specifying the particulars, as described, either before the entry of judgment or within 15 days of the date of mailing of notice of entry of judgment by the clerk of the court, or service by any party of written notice of entry of judgment, or within 180 days after the entry of judgment, whichever is earliest.

This bill would specify that the power of the court to rule on a motion to set aside and vacate a judgment shall expire 60 days from the mailing of notice of entry of judgment by the clerk of the court or 60 days after service upon the moving party by any party of written notice of entry of the judgment, whichever is earlier, or if that notice has not been given, then 60 days after filing of the first notice of intention to move to set aside and vacate the judgment. The bill would also specify that if that motion is not determined with the 60-day period, or within that

period, as extended, the effect shall be a denial of the motion without further order of the court. The bill would further specify that a motion to set aside and vacate a judgment is not determined until a order ruling on the motion is either entered in the permanent minutes of the court or signed by the judge and filed with the clerk.

Vote: majority. Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 663a of the Code of Civil Procedure is  
2 amended to read:

3 663a. (a) A party intending to make a motion to set aside ~~or~~  
4 and vacate a judgment, as described in Section 663, shall file with  
5 the clerk and serve upon the adverse party a notice of his or her  
6 intention, designating the grounds upon which the motion will be  
7 made, and specifying the particulars in which the legal basis for  
8 the decision is not consistent with or supported by the facts, or in  
9 which the judgment or decree is not consistent with the special  
10 verdict, either:

11 (1) Before the entry of judgment.

12 (2) Within 15 days of the date of mailing of notice of entry of  
13 judgment by the clerk of the court pursuant to Section 664.5, or  
14 service upon him or her by any party of written notice of entry of  
15 judgment, or within 180 days after the entry of judgment,  
16 whichever is earliest.

17 (b) Except as otherwise provided in Section 12a, the power of  
18 the court to rule on a motion to set aside and vacate a judgment  
19 shall expire 60 days from the mailing of notice of entry of judgment  
20 by the clerk of the court pursuant to Section 664.5, or 60 days after  
21 service upon the moving party by any party of written notice of  
22 entry of the judgment, whichever is earlier, or if that notice has  
23 not been given, then 60 days after filing of the first notice of  
24 intention to move to set aside and vacate the judgment. If that  
25 motion is not determined within the 60-day period, or within that  
26 period, as extended, the effect shall be a denial of the motion  
27 without further order of the court. A motion to set aside and vacate  
28 a judgment is not determined within the meaning of this section  
29 until an order ruling on the motion is (1) entered in the permanent  
30 minutes of the court, or (2) signed by the judge and filed with the

1 clerk. The entry of an order to set aside and vacate the judgment  
2 in the permanent minutes of the court shall constitute a  
3 determination of the motion, even though that minute order, as  
4 entered, expressly directs that a written order be prepared, signed,  
5 and filed. The minute entry shall, in all cases, show the date on  
6 which the order actually is entered in the permanent minutes, but  
7 failure to comply with this direction shall not impair the validity  
8 or effectiveness of the order.

9 (c) The provisions of Section 1013 extending the time for  
10 exercising a right or doing an act where service is by mail shall  
11 not apply to extend the time specified above.

12 (d) An order of the court granting a motion may be reviewed  
13 on appeal in the same manner as a special order made after final  
14 judgment.

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